

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION NO. 38 OF 2005
IN
APPEAL NO. 860 OF 2005
IN
SUMMONS FOR JUDGEMENT NO. 947 OF 2003
IN
SUMMARY SUIT NO. 2797 OF 2003**

M/s. New Bharat Traders and Ors. ... Petitioners

Versus

Chaudhary Abdul Majid Shahadat ... Respondents

Mr.A.N. Mulla for Petitioners.

Mr. Jayesh Bhatt for Respondents.

**CORAM : F.I. REBELLO &
DR. D.Y.CHANDRACHUD, JJ.
DATED : DECEMBER 14, 2005**

P.C.

. This review is preferred against the order dated 27.10.2005 whereby the appeal preferred by the Review Applicant herein was dismissed. The learned Single Judge in the Summons for Judgement after considering the material in the Summary Suit granted conditional leave to defend. In the appeal preferred after considering the impugned order and the material, the Division Bench chose not to interfere with the view taken by the learned Single Judge.

. The learned counsel on behalf of the review applicant contends that the facts in the present case are similar to the other cases where this court was pleased to grant unconditional leave to defend. What must be considered is the material on record in the summary proceedings. Once the trial court has considered the material and exercised its discretion, this court normally does not interfere unless the view taken was incapable of being taken or amounted to failure to exercise jurisdiction. In the present case, considering the invoices and the defences raised by the Appellant, now applicant herein, we refuse to interfere with the discretion exercised by the learned Judge. In the light of that no case is made out for review. Hence, Review Application rejected.

(F.I. REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)